

AMENDED IN SENATE APRIL 26, 2016
AMENDED IN SENATE APRIL 13, 2016
AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1189

Introduced by Senators Pan and Jackson

February 18, 2016

An act to amend Sections 27491.4, 27491.41, 27491.43, 27491.46, 27491.47, and 27520 of, and to add Section 27522 to, the Government Code, relating to autopsies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1189, as amended, Pan. Postmortem examinations or autopsies: forensic pathologists.

Existing law requires a county coroner to inquire into and determine the circumstances, manner, and cause of certain deaths. Existing law either requires or authorizes a county coroner, under certain circumstances, to perform, or cause to be performed, an autopsy on a decedent. Existing law imposes certain requirements on a postmortem examination or autopsy conducted at the discretion of a coroner, medical examiner, or other agency upon an unidentified body or human remains.

Existing law authorizes the board of supervisors of a county to consolidate the duties of certain county offices in one or more of specified combinations, including, but not limited to, sheriff and coroner, district attorney and coroner, and public administrator and coroner. Existing law authorizes the board of supervisors of a county to abolish the office of coroner and provide instead for the office of medical examiner, as specified, and requires the medical examiner to be a

licensed physician and surgeon duly qualified as a specialist in pathology.

This bill would require that a forensic autopsy, as defined, be conducted by a licensed physician and surgeon. The bill would require that the results of a postmortem examination or autopsy, as specified, forensic autopsy and the cause and manner of death be determined by a licensed physician and surgeon who is a forensic pathologist, preferably a diplomat of the American Board of Pathology. surgeon.

~~This bill would also require blood and urine specimens collected from a patient at the time of admission to a hospital, if the patient is admitted under specified circumstances, to be retained until the patient is discharged from the hospital. The bill would require the specimens to be released to the coroner if the patient dies prior to discharge.~~

~~This~~

The bill would require, for health and safety purposes, that all persons in the autopsy suite have current bloodborne pathogen training and personal protective equipment, as specified. The bill would provide that police and other law enforcement personnel who have completed the specified training may be allowed into the autopsy suite at the discretion of the forensic pathologist, but would prohibit law enforcement personnel directly involved with the care and custody of an individual who died incident to due to involvement of law enforcement activity from being involved with any portion of the postmortem examination or being inside the autopsy suite during the performance of the autopsy. The bill would define a postmortem examination for this purpose to be the external examination of the body where no manner or cause of death is determined.

~~This~~

The bill would require specified materials that are in the possession of law enforcement and are related to a death that is incident to law enforcement activity to be made available to the forensic pathologist prior to the completion of the investigation of the death.

The bill would specify that these provisions shall not be construed to limit the practice of an autopsy for educational or research purposes.

By imposing additional duties upon local officials and law enforcement agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

~~This~~

The bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 27491.4 of the Government Code is
2 amended to read:

3 27491.4. (a) For purposes of inquiry the coroner shall, within
4 24 hours or as soon as feasible thereafter, where the suspected
5 cause of death is sudden infant death syndrome and, in all other
6 cases, the coroner may, in his or her discretion, take possession of
7 the body, which shall include the authority to exhume the body,
8 order it removed to a convenient place, and make or cause to be
9 made a postmortem ~~examination~~ examination, or cause to be made
10 an autopsy thereon, and make or cause to be made an analysis of
11 the stomach, stomach contents, blood, organs, fluids, or tissues of
12 the body. The detailed medical findings resulting from an
13 inspection of the body or autopsy by an examining *licensed*
14 physician *and surgeon* shall be either reduced to writing or
15 permanently preserved on recording discs or other similar recording
16 media, shall include all positive and negative findings pertinent to
17 establishing the cause of death in accordance with medicolegal
18 practice and this, along with the written opinions and conclusions
19 of the examining ~~physician~~, *licensed physician and surgeon*, shall
20 be included in the coroner's record of the death. The coroner shall
21 have the right to retain only those tissues of the body removed at
22 the time of the autopsy as may, in his or her opinion, be necessary
23 or advisable to the inquiry into the case, or for the verification of
24 his or her findings. No person may be present during the
25 performance of a coroner's an autopsy without the express consent
26 of the coroner. *licensed physician and surgeon who is conducting*
27 *the autopsy.*

28 (b) In any case in which the coroner knows, or has reason to
29 believe, that the deceased has made valid provision for the
30 disposition of his or her body or a part or parts thereof for medical

1 or scientific purposes in accordance with Chapter 3.5 (commencing
2 with Section 7150) of Part 1 of Division 7 of the Health and Safety
3 Code, the coroner shall neither perform nor authorize any other
4 person to perform an autopsy on the body unless the coroner has
5 contacted or attempted to contact the physician last in attendance
6 to the deceased. If the physician cannot be contacted, the coroner
7 shall then notify or attempt to notify one of the following of the
8 need for an autopsy to determine the cause of death: (1) the
9 surviving spouse; (2) a surviving child or parent; (3) a surviving
10 brother or sister; (4) any other kin or person who has acquired the
11 right to control the disposition of the remains. Following a period
12 of 24 hours after attempting to contact the physician last in
13 attendance and notifying or attempting to notify one of the
14 responsible parties listed above, the coroner may ~~perform or~~
15 authorize the performance of an autopsy, as otherwise authorized
16 or required by law.

17 (c) Nothing in this section shall be deemed to prohibit the
18 discretion of the coroner to ~~conduct autopsies~~ *cause to be*
19 *conducted an autopsy* upon any victim of sudden, unexpected, or
20 unexplained death or any death known or suspected of resulting
21 from an accident, suicide, or apparent criminal means, or other
22 death, as described in Section 27491.

23 *SEC. 2. Section 27491.41 of the Government Code is amended*
24 *to read:*

25 27491.41. (a) For purposes of this section, “sudden infant
26 death syndrome” means the sudden death of any infant that is
27 unexpected by the history of the infant and where a thorough
28 postmortem examination fails to demonstrate an adequate cause
29 of death.

30 (b) The Legislature finds and declares that sudden infant death
31 syndrome (SIDS) is the leading cause of death for children under
32 age one, striking one out of every 500 children. The Legislature
33 finds and declares that sudden infant death syndrome is a serious
34 problem within the State of California, and that public interest is
35 served by research and study of sudden infant death syndrome,
36 and its potential causes and indications.

37 (c) (1) To facilitate these purposes, the coroner shall, within
38 24 hours, or as soon thereafter as feasible, ~~perform~~ *cause* an
39 autopsy *to be performed* in any case where an infant has died
40 suddenly and unexpectedly.

1 (2) However, if the attending *licensed physician and surgeon*
2 desires to certify that the cause of death is sudden infant death
3 syndrome, an autopsy may be performed at the discretion of the
4 coroner. If the coroner ~~performs~~ *causes an autopsy to be performed*
5 pursuant to this section, he or she shall also certify the cause of
6 death.

7 (d) The autopsy shall be conducted pursuant to a standardized
8 protocol developed by the State Department of Health Services.
9 The protocol is exempt from the procedural requirements pertaining
10 to the adoption of administrative rules and regulations pursuant to
11 Article 5 (commencing with Section 11346) of Chapter 3.5 of Part
12 1 of Division 3 of Title 2 of the Government Code. The protocol
13 shall be developed and approved by July 1, 1990.

14 (e) The protocol shall be followed by all ~~coroners~~ *licensed*
15 *physicians and surgeons* throughout the state when conducting the
16 autopsies required by this section. The coroner shall state on the
17 certificate of death that sudden infant death syndrome was the
18 cause of death when the ~~coroner's~~ *licensed physician and surgeon's*
19 findings are consistent with the definition of sudden infant death
20 syndrome specified in the standardized autopsy protocol. The
21 protocol may include requirements and standards for scene
22 investigations, requirements for specific data, criteria for
23 ascertaining cause of death based on the autopsy, and criteria for
24 any specific tissue sampling, and any other requirements. The
25 protocol may also require that specific tissue samples must be
26 provided to a central tissue repository designated by the State
27 Department of Health Services.

28 (f) The State Department of Health Services shall establish
29 procedures and protocols for access by researchers to any tissues,
30 or other materials or data authorized by this section. Research may
31 be conducted by any individual with a valid scientific interest and
32 prior approval from the State Committee for the Protection of
33 Human Subjects. The tissue samples, the materials, and all data
34 shall be subject to the confidentiality requirements of Section
35 103850 of the Health and Safety Code.

36 (g) The coroner may take tissue samples for research purposes
37 from infants who have died suddenly and unexpectedly without
38 consent of the responsible adult if the tissue removal is not likely
39 to result in any visible disfigurement.

1 (h) A coroner *or licensed physician and surgeon* shall not be
 2 liable for damages in a civil action for any act or omission done
 3 in compliance with this section.

4 (i) No consent of any person is required prior to undertaking
 5 the autopsy required by this section.

6 *SEC. 3. Section 27491.43 of the Government Code is amended*
 7 *to read:*

8 27491.43. (a) (1) Notwithstanding any other ~~provision of law,~~
 9 except as otherwise provided in this section in any case in which
 10 the ~~coroner,~~ *licensed physician and surgeon*, before beginning an
 11 autopsy, dissection, or removal of corneal tissue, pituitary glands,
 12 or any other organ, tissue, or fluid, has received a certificate of
 13 religious belief, executed by the decedent as provided in
 14 subdivision (b), that the procedure would be contrary to his or her
 15 religious belief, the coroner shall not perform that procedure on
 16 the body of the decedent.

17 (2) If, before beginning the procedure, the coroner *or licensed*
 18 *physician and surgeon* is informed by a relative or a friend of the
 19 decedent that the decedent had executed a certificate of religious
 20 belief, the ~~coroner~~ *licensed physician and surgeon* shall not perform
 21 the procedure, except as otherwise provided in this section, for 48
 22 hours. If the certificate is produced within 48 hours, the case shall
 23 be governed by this section. If the certificate is not produced within
 24 that time, the case shall be governed by the other provisions of
 25 this article.

26 (b) Any person, 18 years of age or older, may execute a
 27 certificate of religious belief which shall state in clear and
 28 unambiguous language that any postmortem anatomical dissection
 29 or that specified procedures would violate the religious convictions
 30 of the person. The certificate shall be signed and dated by the
 31 person in the presence of at least two witnesses. Each witness shall
 32 also sign the certificate and shall print on the certificate his or her
 33 name and residence address.

34 (c) Notwithstanding the existence of a certificate, the coroner
 35 may at any time ~~perform~~ *cause an autopsy to be performed* or any
 36 other procedure if he or she has a reasonable suspicion that the
 37 death was caused by the criminal act of another or by a contagious
 38 disease constituting a public health hazard.

39 (d) (1) If a certificate is produced, and if subdivision (c) does
 40 not apply, the coroner may petition the superior court, without fee,

1 for an order authorizing an autopsy or other procedure or for an
2 order setting aside the certificate as invalid. Notice of the
3 proceeding shall be given to the person who produced the
4 certificate. The proceeding shall have preference over all other
5 cases.

6 (2) The court shall set aside the certificate if it finds that the
7 certificate was not properly executed or that it does not clearly
8 state the decedent's religious objection to the proposed procedure.

9 (3) The court may order an autopsy or other procedure despite
10 a valid certificate if it finds that the cause of death is not evident,
11 and that the interest of the public in determining the cause of death
12 outweighs its interest in permitting the decedent and like persons
13 fully to exercise their religious convictions.

14 (4) Any procedure performed pursuant to paragraph (3) shall
15 be the least intrusive procedure consistent with the order of the
16 court.

17 (5) If the petition is denied, and no stay is granted, the body of
18 the deceased shall immediately be released to the person authorized
19 to control its disposition.

20 (e) In any case in which the circumstances, manner, or cause
21 of death is not determined because of the provisions of this section,
22 the coroner may state on the certificate of death that an autopsy
23 was not conducted because of the provisions of this section.

24 (f) A coroner shall not be liable for damages in a civil action
25 for any act or omission taken in compliance with the provisions
26 of this section.

27 *SEC. 4. Section 27491.46 of the Government Code is amended*
28 *to read:*

29 27491.46. (a) The coroner shall have the right to retain
30 pituitary glands solely for transmission to a university, for use in
31 research or the advancement of medical science, in those cases in
32 which the coroner has *required an autopsy to be performed*~~an~~
33 ~~autopsy~~ pursuant to this chapter, and during a 48-hour period
34 following such autopsy the body has not been claimed and the
35 coroner has not been informed of any relatives of the decedent.

36 (b) In the course of any ~~autopsy performed by the coroner,~~
37 ~~autopsy,~~ the coroner may ~~remove~~ *cause to be removed* the pituitary
38 gland from the body for transmittal to any public agency for use
39 in manufacturing a hormone necessary for the physical growth of
40 persons who are, or may become, hypopituitary dwarfs, if the

1 coroner has no knowledge of objection to the removal and release
2 of the pituitary gland having been made by the decedent or any
3 other person specified in Section 7151.5 of the Health and Safety
4 Code. Neither the coroner nor the medical examiner authorizing
5 the removal of the pituitary gland, nor any hospital, medical center,
6 tissue bank, storage facility, or person acting upon the request,
7 order, or direction of the coroner or medical examiner in the
8 removal of the pituitary gland pursuant to this section, shall incur
9 civil liability for the removal of the pituitary gland in an action
10 brought by any person who did not object prior to the removal of
11 the pituitary gland, nor be subject to criminal prosecution for
12 removal of the pituitary gland pursuant to the authority of this
13 section.

14 Nothing in this subdivision shall supersede the terms of any gift
15 made pursuant to Chapter 3.5 (commencing with Section 7150)
16 of Part 1 of Division 7 of the Health and Safety Code.

17 *SEC. 5. Section 27491.47 of the Government Code is amended*
18 *to read:*

19 27491.47. (a) Notwithstanding any other ~~provision of law~~, the
20 coroner may, in the course of an autopsy, ~~remove and release or~~
21 authorize the removal and release of corneal eye tissue from a
22 body within the coroner's custody, if all of the following conditions
23 are met:

24 (1) The autopsy has otherwise been authorized.

25 (2) The coroner has no knowledge of objection to the removal
26 and release of corneal tissue having been made by the decedent or
27 any other person specified in Section 7151 of the Health and Safety
28 Code and has obtained any one of the following:

29 (A) A dated and signed written consent by the donor or any
30 other person specified in Section 7151 of the Health and Safety
31 Code on a form that clearly indicates the general intended use of
32 the tissue and contains the signature of at least one witness.

33 (B) Proof of the existence of a recorded telephonic consent by
34 the donor or any other person specified in Section 7151 of the
35 Health and Safety Code in the form of an audio recording of the
36 conversation or a transcript of the recorded conversation, which
37 indicates the general intended use of the tissue.

38 (C) A document recording a verbal telephonic consent by the
39 donor or any other person specified in Section 7151 of the Health
40 and Safety Code, witnessed and signed by no fewer than two

1 members of the requesting entity, hospital, eye bank, or
2 procurement organization, memorializing the consenting person's
3 knowledge of and consent to the general intended use of the gift.

4 The form of consent obtained under subparagraph (A), (B), or
5 (C) shall be kept on file by the requesting entity and the official
6 agency for a minimum of three years.

7 (3) The removal of the tissue will not unnecessarily mutilate
8 the body, be accomplished by enucleation, nor interfere with the
9 autopsy.

10 (4) The tissue will be removed by a ~~coroner~~, licensed physician
11 and ~~surgeon~~, *surgeon* or a trained transplant technician.

12 (5) The tissue will be released to a public or nonprofit facility
13 for transplant, therapeutic, or scientific purposes.

14 (b) Neither the coroner nor medical examiner authorizing the
15 removal of the corneal tissue, nor any hospital, medical center,
16 tissue bank, storage facility, or person acting upon the request,
17 order, or direction of the coroner or medical examiner in the
18 removal of corneal tissue pursuant to this section, shall incur civil
19 liability for the removal in an action brought by any person who
20 did not object prior to the removal of the corneal tissue, nor be
21 subject to criminal prosecution for the removal of the corneal tissue
22 pursuant to this section.

23 (c) This section shall not be construed to interfere with the
24 ability of a person to make an anatomical gift pursuant to the
25 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with
26 Section 7150) of Part 1 of Division 7 of the Health and Safety
27 Code).

28 *SEC. 6. Section 27520 of the Government Code is amended to*
29 *read:*

30 27520. (a) The coroner shall ~~perform or~~ cause to be performed
31 an autopsy on a decedent, for which an autopsy has not already
32 been performed, if the surviving spouse requests him *or her* to do
33 so in writing. If there is no surviving spouse, the coroner shall
34 ~~perform the cause an~~ *autopsy to be performed* if requested to do
35 so in writing by a surviving child or parent, or if there is no
36 surviving child or parent, by the next of kin of the deceased.

37 (b) The coroner may ~~perform or~~ cause to be performed an
38 autopsy on a decedent, for which an autopsy has already been
39 performed, if the surviving spouse requests him *or her* to do so in
40 writing. If there is no surviving spouse, the coroner may ~~perform~~

1 ~~the cause an autopsy to be performed~~ if requested to do so in
2 writing by a surviving child or parent, or if there is no surviving
3 child or parent, by the next of kin of the deceased.

4 (c) The cost of an autopsy requested pursuant to either
5 subdivision (a) or (b) shall be borne by the person requesting that
6 it be performed.

7 SECTION 1.

8 SEC. 7. Section 27522 is added to the Government Code, to
9 read:

10 27522. (a) *A forensic autopsy shall only be conducted by a*
11 *licensed physician and surgeon.* The results of a ~~postmortem~~
12 ~~examination or forensic autopsy and the cause and manner of death~~
13 shall *only* be determined by a licensed physician and ~~surgeon who~~
14 ~~is a forensic pathologist, preferably a diplomat of the American~~
15 ~~Board of Pathology.~~ *surgeon.*

16 (b) ~~For purposes of this section, a postmortem examination or~~
17 ~~autopsy includes, but is not limited to, the following items, if~~
18 ~~physically feasible:~~

19 (1) ~~Procedures described in subdivision (b) of Section 27521.~~

20 (2) ~~An analysis of the blood, vitreous fluid, urine, bile, stomach~~
21 ~~contents, other tissues or bodily fluids, or organs of the body.~~

22 (3) ~~The examination or removal, or both, of the internal organs~~
23 ~~of the body.~~

24 (4) ~~The retention of any organs or tissues of the body as part of~~
25 ~~the investigation of the death.~~

26 (5) ~~Any laboratory analysis, chemical testing, or imaging~~
27 ~~performed as part of the investigation of the death.~~

28 (e) ~~If a patient is admitted to a hospital with a life-threatening~~
29 ~~injury, or is under the influence of an intoxicating substance, as~~
30 ~~determined by the attending physician at the hospital, or was in~~
31 ~~the custody of a law enforcement agency within 24 hours of~~
32 ~~admission to the hospital, blood and urine specimens collected~~
33 ~~from the patient at the time of admission shall be retained until the~~
34 ~~patient is discharged from the hospital. If the patient dies prior to~~
35 ~~discharge, the specimens shall be released to the coroner.~~

36 (b) *A forensic autopsy shall be defined as an examination of a*
37 *body of a decedent to generate medical evidence for which the*
38 *cause and manner of death is determined.*

1 (c) For purposes of this section, a postmortem examination shall
2 be defined as the external examination of the body where no
3 manner or cause of death is determined.

4 (d) For health and safety purposes, all persons in the autopsy
5 suite shall have current bloodborne pathogen training and personal
6 protective equipment in accordance with the requirements described
7 in Section 5193 of Title 8 of the California Code of Regulations
8 or its successor.

9 (e) (1) Police and other law enforcement personnel who have
10 completed training as described in subdivision (d) may be allowed
11 into the autopsy suite at the discretion of the forensic pathologist.

12 (2) Notwithstanding paragraph (1), if an individual dies ~~incident~~
13 ~~to~~ due to the involvement of law enforcement activity, law
14 enforcement personnel directly involved with the care and custody
15 of that individual shall not be involved with any portion of the
16 postmortem examination, nor allowed inside the autopsy suite
17 during the performance of the autopsy.

18 (f) Any police reports, crime scene or other information, videos,
19 or laboratory tests that are in the possession of law enforcement
20 and are related to a death that is incident to law enforcement
21 activity shall be made available to the forensic pathologist prior
22 to the completion of the investigation of the death.

23 (g) This section shall not be construed to limit the practice of
24 an autopsy for educational or research purposes.

25 ~~SEC. 2.~~

26 SEC. 8. If the Commission on State Mandates determines that
27 this act contains costs mandated by the state, reimbursement to
28 local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.